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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,693	04/19/2004	Stephen Perenich	2130.0	9583
22497	7590	07/26/2006	EXAMINER	
<b>LARSON AND LARSON</b> 11199 69TH STREET NORTH LARGO, FL 33773				STASHICK, ANTHONY D
		ART UNIT		PAPER NUMBER
				3728

DATE MAILED: 07/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/826,693	PERENICH, STEPHEN	
	<b>Examiner</b>	<b>Art Unit</b>	
	Anthony Stashick	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 11 May 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 3-16 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1 and 2 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 23 August 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Species VI: The Embodiment of Figures 17-22 in the reply filed on May 11, 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 3-16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species, there being no allowable generic or linking claim. Election was considered made **without** traverse in the reply filed on May 11, 2006. Accordingly, the examiner has reviewed the claims that applicant states "reads on" the elected invention, Claims 1, 2 and 9-15. Of these claims, it has been determined that claims 9-15 do not read on the elected invention since none of Figures 17-22 show the second ends of each of the second and third tandem hinges being pivotally engaged by first and second pivots as claimed in claim 9. The tandem hinges in the figures are that designated as C (or H) and similar links. Taking this into consideration, the examiner has looked at all similar hinges throughout the figures (especially Figure 17) and has found that these figures do not support a first and second pivot engagement of each of the first and second tandem hinges. The tandem hinges appear to be that which links D to J in Figure 17. The upper and lower links of these hinges appear to only be linked together by a single pivot.

### ***Claim Objections***

3. Claim 2 is objected to because of the following informalities: Claim 2 includes the term "power struts" in line 6 of the claim. It appears that the word "power" should be --lower--. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1-2 are rejected under 35 U.S.C. 102(e) as being anticipated by Rennex 6,684,531. Rennex '531 discloses all the limitations of the claims including the following: (see especially Figures 4a-) a shoe suspension system (Figure 4a) for use with a shoe or boot; an upper sole 23 engaged to the bottom of the shoe or boot (refer to Figures 5a-5c); the upper sole having an upper toe sole (forward of pivot 20 in Figure 5c) and an upper mid heel sole (rearward of pivot 20 in Figure 5c); the upper toe sole being pivotally engaged to the upper mid heel sole (by pivot 20); a lower sole 25 having a lower toe sole (in the toe area of 25), a lower mid sole (in the midfoot area of 25) and a lower heel sole (in the heel area of 25); a first tandem hinge 14 pivotally engaged between the upper toe sole and the lower toe sole which opens and closes parallel to a longitudinal axis of the shoe; a plurality of tandem hinges (the hinges marked 10 and those marked 14 in the heel of the sole) pivotally engaged between the upper mid heel sole and the lower sole which open and close parallel to the longitudinal axis of the shoe; at least one return spring (51 in Figure 4a or alternatively 19 in Figure 6) engaged between the upper mid heel sole and the

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lower sole; a second (Figure 4a, first set of links 10 from the left of the figure forming a hinge) and third tandem hinge (14 in the heel area) of the plurality of tandem hinges are pivotally engaged (by 16) between the upper mid heel sole and the lower sole; the second and third tandem hinges each have two upper struts and two lower struts (see Figure 6, shows hinges located on both the medial and lateral sides of the shoe sole).

*Conclusion*

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and are cited on Form 892 enclosed herewith.

7. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Stashick whose telephone number is 571-272-4561. The examiner can normally be reached on Monday through Thursday from 8:30 am until 4:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Anthony Stashick  
Primary Examiner  
Art Unit 3728

ADS